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ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209-3873

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OFFICE OF PETITIONS

In re Application of :
Nitta et al. : DECISION ON PETITION
Application No. 09/324,168 :
Filed: June 2, 1999 :
Atty. Docket No. 500.33793R00 :

This is a decision on the petition under 37 CFR 1.47(a) filed on September 6, 2005, which is being taken as a petition filed under 37 CFR 1.183, requesting waiver of the reissue application filing requirements of 37 CFR 1.172. Section 1.172 requires that oaths/declarations in broadening reissue applications be signed by all of the inventors.

The petition is granted.

DECISION

37 CFR 1.172 requires that a reissue oath/declaration be made by the inventors, except as otherwise provided (§§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged.

This reissue application, which seeks to broaden the scope of the claims, was filed with signatures of all seven inventors on the original declaration. A supplemental declaration under 37 CFR 1.175(b)(1) was required by the examiner in the Office action of May 6, 2005.

Applicants then filed the present petition, accompanied by (1) a supplemental declaration signed by six of the seven inventors, (2) a declaration of Shinya Yamaji, captioned as "Declaration of Shinya Yamaji Presenting Statement of Facts under CFR § 1.47," (3) a copy of the returned envelope of the mail sent to the last known address of non-signing inventor, Makiko Miyamoto, and (4) a request for an extension of time for response within the first month accompanied by the fee.

In the petition, petitioner has described a factual situation relating to an inventor's refusal to sign a further declaration in this application, after the original declaration was signed by that inventor. 37 CFR 1.175(b)(1), taken in conjunction with § 1.172, requires such a declaration to be signed by the inventors. Since all oaths or declarations necessary to fulfill the rule requirements in a reissue application are taken together collectively as a single oath or declaration, each must bear the appropriate signatures of the inventors. See *In re Hayes*, 53 USPQ2d 1222 (Comm'r Pat. 1999). Accordingly, the present petition under 37 CFR 1.47(a) is being taken as a petition filed under 37 CFR 1.183, requesting waiver of the reissue application filing requirements of 37 CFR 1.172.

37 CFR 1.183 permits, in an extraordinary situation, waiver of a rule that is not a requirement of the statute, where justice requires such waiver. As pointed out, applicants have requested a waiver of the requirement of 37 CFR 1.172 that a supplemental declaration be signed by all of the inventors. A petition of this type must be accompanied by proof that the inventor (i) cannot be found or reached after a diligent effort or (ii) refuses to execute the declaration.

The Declaration of Yamaji states that applicants obtained the last known address and telephone number of inventor Miyamoto from the Management Division and from a colleague in the department in which Miyamoto belonged. Applicants attempted to contact Miyamoto by telephone; however, the telephone number was no longer in use. Additionally, applicants mailed the supplemental declaration to Miyamoto for her signature at her last known address via registered mail. The mail was returned to applicants by the Japanese Post Office with a notice indicating that it could not be delivered because Miyamoto's new address was not known. A copy of the returned envelope accompanies the petition.

Applicants have made an appropriate showing as to the unavailability of the non-signing inventor, Makiko Miyamoto, including a requisite effort in ascertaining the inventor's address. Accordingly, the supplemental declaration of September 6, 2005, signed by each of the joint inventors except Miyamoto, who, by the showing accompanying the petition, cannot be located, will be accepted as though it was signed by all of the inventors as required by 37 CFR 1.175(b)(1) taken in conjunction with § 1.172. See *In re Hayes*, *supra*.

CONCLUSION

1. The petition is **granted**.
2. The petition fee in the amount of \$400.00 will be charged to counsel's deposit account, No. 01-2135, as authorized.
3. After mailing this decision, jurisdiction over the application will be transferred to Technology Center Art Unit 2674 for further action.
4. Telephone inquiries related to this decision should be directed to Senior Petitions Attorney Christina Tartera Donnell at (571) 272-3211.
5. Inquiries regarding petition status or general petition information are handled by the Office of Petitions staff at (571) 272-9282.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy